

## **MINUTES OF MEETING OF THE CORPORATIONS COMMITTEE**

**March 2, 2007**

A regular meeting of the Corporations Committee (the "Committee") of the Business Law Section of the State Bar of California was held in Sacramento, California at the Department of Corporations on March 2, 2007. Attendance was as follows:

### **MEMBERS PRESENT:**

W. Derrick Britt  
Nelson Crandall  
Edward A. Deibert  
Bruce Deming  
Christopher Delfino  
Nina Hong  
Lemoine Skinner, III  
Michael J. Froch  
Steve Harmon  
Brian Lebrecht\*  
Barbara Mathews  
William R. Sawyers\*  
Rose Sorensen  
Jennifer Sostrin  
Steven Stokdyk\*  
James J. Thompson  
Suzanne Weakley  
Russ Wood

### **MEMBERS ABSENT:**

Matthew Gemello  
Peter Heinecke  
Samuel C. Dibble  
Sharon R. Flanagan  
Deborah J. Rousch  
Mike Occhiolini  
Peter Wardle

### **LIAISONS AND GUESTS PRESENT:**

Betsy Bogart – Secretary of State  
Petty Fairman – Department of Corporations  
Steve Hazen – Executive Committee\*  
Tim Le Bas – Department of Corporations  
Anne Marie Liu – Department of Corporations  
Colleen Monahan – Department of Corporations  
Michael Santiago – Department of Corporations  
Jerry Twomey – Department of Corporations  
Todd Vlaanderen – Secretary of State  
Preston DuFauchard – California Corporations Commissioner

\*Via Telephone

The minutes summarize discussion primarily in the order items were listed on the Agenda for the meeting previously circulated to members of the Committee, which is not necessarily the order in which the items were actually taken up at the meeting. The Committee did not take up those topics listed on the Agenda that are not described in these minutes.

## I. Administrative Matters

1. Opening Remarks: The meeting was called to order by Co-Chair Deming at 9:30. All members, liaisons and guests introduced themselves.

2. Introduction of and Comments by Preston DuFauchard, California Corporations Commissioner: Commissioner DuFauchard discussed recent developments and his career background. Addressed recent movement to decrease regulatory requirements facing businesses and believes that this should be balanced by increase in shareholders and shareholder influence.

3. Approval of minutes: Minutes of January 5 and February 2 meetings approved, subject to minor comments.

## II. Agency and Liaisons' Reports

1. Securities and Exchange Commission: No report.

2. NASD: No report.

3. Department of Corporations: Mr. Le Bas discussed a number of ongoing projects. At the NASAA level, the DOC is a member of the same. NASAA appoints projects each year, certain of which have been assigned to the DOC. Specifically, the DOC is handling the corporate accountability project and statements of policy governing shareholder approval of executive compensation and independence of compensation consultants. Mr. Le Bas also noted SB 294 that he would like the Committee to take up. Ms. Monahan discussed ongoing rulemaking. Mr. Le Bas noted that the FTC published its franchising rules. Mr. Le Bas discussed AB 817 regarding mutual water companies, AB 1583 regarding enforcement authority and a technical bill, SB 998 deals with cleanup to various lending laws (including financing lending laws, such as exemption from licensure) and AB 804 deals with escrow agents.

4. Secretary of State: Ms. Bogart discussed the name availability issues that have arisen. The SOS is working on regulations to address the issue. Not intended to provide trademark protection. Same name for a corporation can exist for an LLC, subject to certain requirements. Committee will solicit volunteers on such regulations regarding name availability. Discussed new partnership act.

5. Office of Governmental Affairs: Mr. Doyle introduced himself and advised new members of the Committee that he is the lobbyist for the state bar section. Discussed SB 294 (corporate disclosure) sponsored by Senator Ackerman.

6. BLS Committee liaison reports:

A. ADR: Mr. Lebrecht reported that there is nothing new to report, other than two upcoming programs at the annual meeting.

B. Corporate Law Departments: Ms. Mathews reported that she did not attend the prior CLD meeting.

C. Cyberspace Law: Mr. Thompson reported on February 8 meeting. Noted that CL is working on a primer on cyberspace and e-commerce legislation.

D. Financial Institutions: No report.

E. Non-Profit Corporations: Mr. Sawyers reported on recent meeting. Noted that the NPC filed a formal comment letter regarding tax exempt status time frames. NPC is looking to join forces with the Committee.

F. Partnerships and LLCs: Mr. Britt reported on recent meeting.

G. UCC: No report.

H. Executive Committee: Mr. Hazen discussed constituency group email lists. Given the increase of subscribers to the same, Mr. Hazen noted the significance of e-bulletins.

### III. SUBCOMMITTEE REPORTS

1. Legislation: Mr. Harmon discussed ongoing legislation. Legislative update table provided in meeting materials. Mr. Harmon solicited volunteers concerning AB 299 (Tran Bill). Mr. Skinner volunteered. Relates to Corporations Code section 1157 and a recommendation to correct an erroneous cross-reference. Mr. Harmon also discussed AB 310 which relates to partnerships. Mr. Harmon mentioned that AB 1516 and AB 1583 are good projects for the Committee to undertake. Solicited volunteers for AB 1583 which relates, in part, to filing fees for a late exempt transaction notice. Mr. Skinner and Mr. Britt volunteered.

A. ALP re Close Corps: Mr. Harmon reported that comments to our affirmative proposal need to be reviewed by the Committee. Mr. Doyle noted that with respect to ALPs (Affirmative Legislative Proposals), timing is as follows: (a) Executive Committee must approve ALP by August 1, (b) ALP circulated to other sections/committees of the state bar for the next 60 days, (c) ALP considered by the Board of Governors between October and December, depending on their schedule,

#### B. New Legislation Update:

(i) AB 251: Subcommittee working on the same. Information in meeting materials. Mr. Britt commented that this is last year's AB 2122. No hearing scheduled yet, although Mr. Doyle expects the same to occur by mid-March/ early-April. Committee voted to approve the proposal.

(ii) SB 294 Corporate Disclosure Act: Mr. Harmon and Mr. Deming indicated that a third subcommittee member is needed. Mr. Deibert volunteered. Mr. Le Bas

recommended an additional proposal/resolution encouraging the SEC/Congress to continue moving forward.

(iii) Others: None.

C. Proposed Topic for New ALPs:

(i) Spousal Consents: Mr. Crandall and Ms. Weakley volunteered to assist.

(ii) Section 1101 (mergers): Subcommittee working on proposal in advance of the April meeting (relates to unanimous approval requirement for certain mergers under Section 1101).

2. Communications/ Website:

A. E-Bulletin Topics: Discussed recent e-bulletins. FRE 502 Comment letter e-bulletin to be published next month. Annual meeting minutes services e-bulletin discussed. Ms. Sorensen volunteered to assist with such e-bulletin, and will coordinate with Ms. Bogart. Stock options regulatory e-bulletin slotted for May. Other topics include summary of significant business issues, ALP re corporate disclosure act, etc.

B. Website Update: In process. Handwritten comment form is no longer required by the state bar. Mr. Froch inquired as to whether we can track website users.

C. Extranet: In development stage. Discussion ensued. Mr. Wood commented that it would be helpful to have access to a calendar which would provide, in part, when comment periods expire, etc.

3. Education/ Publications:

A. Programs:

(i) September 2007 Annual Meeting: Ms. Hong discussed the below referenced topics.

(1) Recent Developments:

(2) 25102(o):

(3) Attorney-Client Privilege FRE 502:

B. Publications/BLN Article: Ms. Hong spoke with the editor, Mr. Pike, who has encouraged our committee to submit articles or manage an issue and collect articles in connection with the same. Discussion ensued.

(i) Request for Topics:

4. Litigation: Mr. Diebert discussed two cases addressing backdating of stock options.

IV. Ongoing Projects:

1. Section 2115 Project: Nothing to report.

2. Letter to Judicial Advisory Committee on Rule 502:

3. Business Entity Name Issues: Discussed earlier.

4. 25102(o) Reform: Mr. Deming noted that there is a draft of the letter that Committee members are encouraged to review.

5. Privilege Issues:

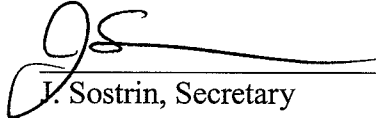
A. ABA Task Force on Attorney-Client Privilege: Ms. Mathews reported on the last task force meeting and discussed SB 186 legislation. Next meeting scheduled to occur during April. Mr. Froch also provided a report concerning the last task force meeting.

B. Office of Rural Legal Assistance:

6. Venture Capital Opinion Project:

V. New Business: Next meeting. April 6 in Los Angeles.

Respectfully Submitted,

  
J. Sostrin, Secretary